

November 30, 2021

Via ECF

The Honorable Nina Gershon
United States District Judge
The Honorable Roanne L. Mann
United States Magistrate Judge
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Joint Status Report: *Suffolk County Water Authority v. The Dow Chemical Co. et al.*,
No. 2:17-cv-6980-NG-RLM, and *Related Cases*

Dear Judge Gershon and Judge Mann:

On behalf of all 32 Parties in the referenced cases, the Parties update below their progress regarding discovery items previously reported to the Court and regarding additional case updates.

I. Plaintiffs' Supplemental Document Productions

Following conferral, further information exchanges, and Plaintiffs' (and their consultants') production of various additional materials after the hearing on Defendants' Motions to Compel, Defendants are reviewing Plaintiffs' additional document productions. This includes the October and November productions by 24 Plaintiffs of testing data obtained from the third-party laboratory PACE Analytical. If Defendants believe there are remaining issues with Plaintiffs' productions, they will confer with Plaintiffs.

II. Third-Party Complaints

On August 30, Dow, Ferro, and Vulcan filed third-party contribution claims against 84 third-party defendants. On October 22, the Court granted Plaintiffs' motion and severed and stayed these contribution claims until resolution of Plaintiffs' claims, or further order of the Court. ECF 243.

III. Written Discovery

On November 10, Dow, Ferro, and Vulcan served Interrogatories that asked each Plaintiff to identify, among other things, each well allegedly contaminated by Dow, Ferro, and Vulcan's products, and the names, label language, and actual disposers of those products in each well. On November 13, Plaintiffs served Requests for Admissions on Dow, Ferro, and Vulcan asking them to admit whether every document they produced was authentic as defined by Federal Rule of Evidence 901(a). Responses to the Interrogatories and Requests for Admission are due December 10 and 13, respectively.

Following the November 18 deposition of Dow's witness on health and toxicological effects, Plaintiffs renewed their request for Dow to produce documents generated after it stopped producing dioxane and TCA, as well as documents related to Dow's dioxane issue management team. Dow and Plaintiffs are conferring to determine if they can resolve, or at least narrow, this dispute. If they are unable to resolve it, Plaintiffs will promptly move to compel production.

IV. Party Depositions

Plaintiffs served Rule 30(b)(6) Notices on Dow, Ferro, and Vulcan. Dow, Ferro, and Vulcan have served a Rule 30(b)(6) Notice on SCWA with 54 topics and separately identified an initial group of 16 current SCWA employees that they intend to depose as fact witnesses, and asked SCWA whether it will participate in contacting and presenting former SCWA employees for depositions. The Parties have a conferral scheduled, and will confer and advise the Court of any issues related to Defendants' deposition requests.

The Parties have and continue to meet and confer about the scope of the topics to be covered at the Rule 30(b)(6) depositions. Dow's witness on its health effects and toxicological studies was deposed on November 18, and its witness on certain environmental issues is set to be deposed on December 7. Depositions of Ferro are set for January 7 and January 28, and depositions of Vulcan are set for January 19 and 20. The Parties continue to confer about the timing and scope of depositions for certain remaining topics in the Notices.

V. Third-Party Discovery

To date, the Parties have served over 100 document subpoenas or FOIA requests on third parties, which has resulted in the production of approximately 240,000 third-party documents.

In addition, Plaintiffs have served a third-party deposition subpoena on Pride Solvents & Chemical Co., Inc., which is a distributor of chemical products on Long Island. That deposition is in the process of being scheduled.

* * *

The Parties will provide the Court with a further update in the next regularly scheduled status report on February 28, 2022, but will promptly bring to the Court any issues requiring earlier intervention following good faith conferral.

Respectfully submitted,

/s/ Joel Alan Blanchet
JOEL ALAN BLANCHET
jblanchet@phillipslytle.com
ANDREW P. DEVINE
adevine@phillipslytle.com

/s/ Katie H. Jones
KATIE H. JONES
katie@sheredling.com
MATTHEW K. EDLING
matt@sheredling.com
VICTOR M. SHER

PHILLIPS LYTLE LLP

One Canalside
125 Main Street
Buffalo, NY 14203
(716) 847-7050

KEVIN T. VAN WART
kevinvanwart@kirkland.com
NADER R. BOULOS
nboulos@kirkland.com

KIRKLAND & ELLIS LLP

300 North LaSalle
Chicago, IL 60654
(312) 862-2000

Attorneys for Defendant The Dow Chemical Company

ROBB W. PATRYK
robb.patryk@hugheshubbard.com
FARANAK SHARON TABATABAI
fara.tabatabai@hugheshubbard.com

HUGHES HUBBARD & REED LLP

One Battery Park Plaza
New York, NY 10004
(212) 837-6000

Attorneys for Defendant Ferro Corporation

STEPHEN C. DILLARD, *pro hac vice*
steve.dillard@nortonrosefulbright.com
NORTON ROSE FULBRIGHT US LLP
1301 McKinney, Suite 5100
Houston, Texas 77010
(713) 651-5151

FELICE B. GALANT
felice.galant@nortonrosefulbright.com
NORTON ROSE FULBRIGHT US LLP
1301 Avenue of the Americas
New York, NY 10019
(212) 318-3000
Attorneys for Defendant Vulcan Materials Company

MEGAN R. BRILLAULT
mbrillaault@bdlaw.com
DANIEL M. KRAININ

vic@sheredling.com
STEPHANIE D. BIEHL
stephanie@sheredling.com
MARGARET V. TIDES
maggie@sheredling.com
QUENTIN C. KARPILOW
quentin@sheredling.com
SHER EDLING LLP
100 Montgomery St. Suite 1410
San Francisco, CA 94104
(628) 231-2500
Attorneys for Plaintiffs¹

SCOTT MARTIN
smartin@hausfeld.com
JEANETTE BAYOUMI
jbayoumi@hausfeld.com
HAUSFELD LLP
33 Whitehall St., 14th Floor
New York, NY 10004
(646) 357-1100

RICHARD S. LEWIS
rlewis@hausfeld.com
HAUSFELD LLP
1700 K Street, NW, Suite 650
Washington, DC 20006
(202) 540-7200

JAMES GOTZ
jgotz@hausfeld.com
HAUSFELD LLP
One Marina Park Drive, Suite 1410
Boston, MA 02210
(617) 207-0600

KATIE R. BERAN
kberan@hausfeld.com
HAUSFELD LLP
325 Chestnut Street, Suite 900
Philadelphia, PA 19106
(215) 985-3270
Attorneys for Plaintiff Suffolk County Water Authority

FRANK R. SCHIRIPA
fschiripa@hrsclaw.com

¹ The Sher Edling firm represents all Plaintiffs in these related cases except Plaintiffs New York American Water (19-cv-2150) and Hicksville Water District (19-cv-5632).

dkrainin@bdlaw.com
PAULA J. SCHAUWECKER
pschauwecker@bdlaw.com
BEVERIDGE & DIAMOND P.C.
477 Madison Avenue
15th Floor
New York, NY 10022
212-702-5400
Attorneys for Defendant Shell Oil Company

DAVID J. LENDER
david.lender@weil.com
JED PAUL WINER
jed.winer@weil.com
WEIL, GOTSHAL & MANGES, LLP
767 Fifth Avenue
New York, NY 10153
212-310-8000

DIANE P. SULLIVAN
diane.sullivan@weil.com
WEIL GOTSHAL & MANGES LLP
17 Hulfish Street, Suite 201
Princeton, NJ 08542
609-986-1120
Attorneys for Defendant The Procter & Gamble Company

MICHAEL A. ROSE
mr@hachroselaw.com
HILLARY M. NAPPI
hnappi@hrsclaw.com
HACH ROSE SCHIRIPA & CHEVERIE, LLP
112 Madison Avenue - 10th Floor
New York, New York 10016
(212) 213-8311

J. NIXON DANIEL, III
jnd@beggsllane.com
MARY JANE BASS
mjb@beggsllane.com
BEGGS & LANE, RLLP
501 Commendencia Street
Pensacola, FL 32502
850-469-3306

T. ROE FRAZER, II
roe@frazer.law
THOMAS ROE FRAZER, III
trey@frazer.law
W. MATTHEW PETTIT
mpettit@frazer.law
FRAZER PLC
30 Burton Hills Blvd., Suite 450
Nashville, TN 37215
615-647-0987
Attorneys for Plaintiff New York American Water Company, Inc.

Paul J. Napoli
pnapoli@nsprlaw.com
Lilia Factor
lfactor@napolilaw.com
NAPOLI SHKOLNIK PLLC
360 Lexington Avenue, 11th Floor
New York, NY 10017
(212) 397-1000
Attorneys for Plaintiff Hicksville Water District

cc: All Counsel of Record (by ECF)